IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE HARUN-UL-RASHID

FRIDAY, THE 3RD AUGUST 2007 / 12TH SRAVANA 1929

ST.Rev..No. 118 of 2003

TA.675/2001 of KERALA AGRICULTURAL INCOME TAX AND SALES TAX APPELLATE TRIBUNAL, ADDL.BENCH-I, PALAKKAD.

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PETITIONER/ASSESSEE:

M/S. VANCHINAD FORGINGS PVT.LTD.,
NEW INDUSTRIAL DEVELOPMENT AREA, KANJIKODE,
PALAKKAD-678 621.

BY ADV. SRI.T.M.SREEDHARAN
SRI.DEEPAK JOY.K.

RESPONDENT: REVENUE:

STATE OF KERALA,
REPRESENTED BY THE CHIEF SECRETARY TO GOVERNMENT,
SECRETARIAT, THIRUVANANTHAPURAM.

BY SENIOR GOVERNMENT PLEADERN SRI MOHAMMED RAFIQ.

THIS SALES TAX REVISION HAVING BEEN FINALLY HEARD ON 03/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

H.L. DATTU, C.J. & HARUN-UL-RASHID, J.

S.T. Rev. No. 118 of 2003

Dated, this the 3rd day of August, 2007

ORDER

H.L. DATTU, CJ.

Petitioner is a small scale industry. It is engaged in re-rolling of iron scrap and ingots into iron bars and sections. For the assessment year 1998-99, petitioner had declared its total and taxable turnover before the assessing authority.

2. While computing the tax liability, the assessing authority had levied tax under section 5A of the Kerala General Sales Tax Act (the Act, for short). The said order of the assessing authority was the subject matter of appeal before the first appellate authority in S.T.A No.106 of 2000. The appellate authority has rejected the appeal. Thereafter the assessee has filed a second appeal before the Kerala Agricultural Income Tax and Sales Tax Appellate Tribunal in T.A.No.675 of 2001. The Tribunal has rejected the appeal by its order dated 30th April, 2002. That is how the assessee is before us in this revision petition filed under section 41 of the Act.

3. The assessee has framed the following questions of law for our consideration and decision. They are as under:

> "Whether on the facts and circumstances of the case:
> (i) the Appellate Tribunal was right in holding that levy of purchase tax under section 5A (ia) of the K.G.S.T. Act for 1998-99 was legal and valid in the petitioner's case?
> (ii) the levy of purchase tax at 4% u/s. 5A on the purchase turnover of raw materials from other SSI Units enjoying the tax exemption, is legal and in accordance with law?
> (iii) the order of the Appellate Tribunal is legal, valid and sustainable in law?"

4. In our view, as on today the questions of law framed by the assessee are no

more debatable in view of the declaration of law made by the Apex Court in the case of *Peekay Re-Rolling Mills (P) Ltd. v. Asst. Commissioner and another - (2007) 4 SCC 30.* In the said decision the Supreme Court has observed as under:

> "The appellant Company was a registered dealer under the Kerala General Sales Tax Act, 1963 (for short "the State Act"). It carried on the business of steel re-rolling mills. The raw material used by the appellant in the production of bars and rods was steel ingots, which the appellant either manufactured or purchased from other manufacturers from within or outside the State. Purchase of steel ingots effected by the appellant within the State were from manufacturing units, which were exempt from the payment of sales tax on the sale of such ingots by virtue of an exemption notification SRO No.1729/93 issued under Section 10 of the State Act. The Department took the view that under the said circumstances, the appellant was liable to pay purchase tax under Section 5-A of the State Act for AYs 1994-95 and 1996-97 to 1999-2000. The appellant then filed writ petitions before the High Court but a Single Judge dismissed the writ petitions as not maintainable. Writ appeals filed by the appellant were dismissed by a Division Bench. Although not upholding the view taken by the Single Judge, the Division Bench rejected the contention of the appellant that in view of Article 286(3) of the Constitution read with Section 15 of the Central Sales Tax Act (for short "the Central Act"), it was impermissible to levy purchase tax under Section 5-A of the State Act. It further held that the expression "levy" included collection of tax as well and not mere imposition. It held that in the absence of collection of tax, there was no levy and since the goods were exempted from payment of sales tax, the goods could be subjected to levy of purchase tax under Section 5-A of the State Act. The appellant then filed the present appeals.
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> Before the Supreme Court, the appellant Company contended that goods being declared goods under Section 14 of the Central Act, were subject to limits placed by Section 15 thereof. That therefore, if

iron and steel were subjected to a single-point levy of tax at the first point of sale, then there was no question of a second levy or charge at any subsequent point of sale or purchase. That in view of Section 5(1) read with the Second Schedule of the State Act, the burden of tax could not be shifted to the purchaser as the State Government had already notified that the tax would be at the point of first sale. That the High Court erred in assuming that the word "levied" in Section 15(a) of the Central Act was used in the sense of imposed and collected. That the word levy could cover imposition. That non-collection of tax imposed would not mean non-levy of tax.

On the other hand, the respondent Revenue contended that the purchase tax under Section 5-A of the State Act was capable of being levied only where no sales tax was levied on the taxable goods under Section 5 thereof and thus only a single-point levy or one-stage levy took place i.e. either sales tax or purchase tax and not both. That in view of the provisions of the State Act, the expression levy would include collection or payment as well and not mere authorisation of levy."

5. In view of the law declared by the Apex Court in *Peekay Re-rolling Mills'* case, the revision petition filed by the assessee requires to be allowed and the orders passed by the Tribunal in T.A.No.675 of 2001 in so far as the levy of purchase tax is concerned, requires to be set aside and it is set aside. Ordered accordingly.

H.L. DATTU,
CHIEF JUSTICE.

HARUN-UL-RASHID,
JUDGE.

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